

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 6, 2001

10:08 A.M.

Reported by:
Valorie Phillips
Contract No. 150-99-002

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

William Keese, Chairman

Robert A. Laurie

Robert Pernell

James Boyd, Ex Officio

STAFF PRESENT

Steve Larson

William Chamberlain

Jeff Ogata

Robert Worl

Susan Gefter

Kevin Kennedy

Jack Caswell

ALSO PRESENT

Mark Lyons, Director of Development
CalPeak Power, LLC

Jonathan Brindle, Assistant Planning Director
City of Escondido

Joseph H. Rowley, Vice President
Semptra Energy Resources

Dean N. Vanech, President
Delta Power Company, LLC

Mike Boyd, Californians for Renewable Energy

Dorsey Nunn
Heidi Strupp
Legal Services for Prisoners with Children

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1 P R O C E E D I N G S

2 10:08 a.m.

3 CHAIRMAN KEESE: I call this meeting of
4 the California Energy Commission to order.
5 Commissioner Pernell, would you lead us in the
6 Pledge, please.

7 (Whereupon, the Pledge of Allegiance was
8 recited in unison.)

9 CHAIRMAN KEESE: Thank you and good
10 morning. As we start this meeting I know we have
11 a number of people on the phone, and the
12 Secretariat has been busy communicating with them.

13 I would like, at this time, to have the
14 names of the people that we believe are on the
15 phone read for the record. And if you are on the
16 phone and would answer aye when your name is
17 called, please.

18 Could we go through the names that we're
19 aware of?

20 MS. ROSS: Okay, Michael Boyd from CARE,
21 Californians for Renewable Energy.

22 MR. BOYD: Aye.

23 MS. ROSS: And Dorsey Nunn and Heidi
24 Strupp who are with Prisoners, Children, Legal
25 Services for Prisoners with Children.

1 CHAIRMAN KEESE: Are you there?

2 MR. NUNN: Yeah, I'm here.

3 MS. STRUPP: I'm Heidi. I'm here, Heidi
4 Strupp is here.

5 CHAIRMAN KEESE: Thank you. Is that is?
6 Is there someone else on the line who would care
7 to be identified?

8 Thank you.

9 We'll then take up item CalPeak
10 Enterprise #7. Consideration and possible
11 adoption of the Committee's proposed decision for
12 the CalPeak Enterprise #7 project, docket number
13 01-EP-10.

14 The CalPeak Enterprise project is to be
15 located in the City of Escondido. It was accepted
16 by the Commission on May 17, 2001. As the
17 Presiding Member of this project I conducted a
18 site visit and hearing on May 24th. A staff
19 assessment of the project was completed on June
20 3rd. And the proposed decision was filed on June
21 4th.

22 In the proposed decision I recommend
23 certification of the project subject to the
24 conditions discussed in the decision and the staff
25 assessment which is incorporated by reference into

1 the proposed decision.

2 Comments from staff, please.

3 MR. WORL: My name is Robert Worl. I
4 was the Project Manager on the CalPeak Escondido
5 project.

6 This project has had a couple of items
7 that have come down to the last minute. And we
8 have both the principal, CalPeak, with information
9 following up; also the City of Escondido has a few
10 points to make. Mr. Jon Brindle is here
11 representing them.

12 And Sempra Energy, which is about to
13 propose a facility adjacent and is in a joint
14 venture to develop a business park, is also here
15 to represent a few issues that had been heretofore
16 resolved. But my understanding is they've been
17 resolved.

18 We have one procedural errata which is a
19 clarification regarding conditions of compliance.
20 And Mr. Ogata has drafted the errata sheet that
21 affects those things. One is traffic and
22 transportation. And we have clarified the
23 verification for that.

24 And the other one is a transmission
25 system engineering, TSE-2. And it has been added.

1 Basically we're here to answer any
2 procedural questions that might arise. But the
3 principals are here and can certainly speak for
4 themselves regarding any particular issues or
5 respond to any questions.

6 CHAIRMAN KEESE: Thank you. Why don't
7 we hear from Mr. Lyons, CalPeak.

8 MR. LYONS: Thank you, Chairman Keese,
9 Commissioners.

10 There are just two items that I'd like
11 to request revision of the record for from our
12 original application.

13 One is that in our application we've
14 discussed with regard to the storage of aqueous
15 ammonia, that secondary storage area would contain
16 floating poly balls designed to --

17 CHAIRMAN KEESE: I'm sorry, can you get
18 real close to the mike. These work only when you
19 get real close.

20 MR. LYONS: Okay, can you hear me?

21 CHAIRMAN KEESE: Yes, now we can.

22 MR. LYONS: We had proposed that we
23 would use floating poly balls to reduce the
24 surface area and for spillage. And we have been
25 requested by John Kolb of the County of San Diego,

1 Hazardous Materials Division, that we not use poly
2 balls.

3 So we'd like to request that we not use
4 the poly balls in the secondary containment.

5 CHAIRMAN KEESE: Staff, comment on that?

6 MR. WORL: No, we don't have any problem
7 with that. They have more than adequate measures
8 to prevent any spillage, and this is basically
9 something that's been discussed with the County,
10 itself. It's at the County's request, and is
11 agreed to by the applicant, so we're fine with it.

12 CHAIRMAN KEESE: Thank you. Second
13 item?

14 MR. LYONS: Well, the second item is
15 that in our application we talked about the
16 possibility of undergrounding our interconnection
17 between our facility and the San Diego Gas and
18 Electric system.

19 Since that time we've been in
20 discussions with Sempra Energy Resources, the
21 prospective adjacent landowner, for the industrial
22 park, and we have agreed to underground that
23 interconnect.

24 And so we'd like to request an amendment
25 of the record in that regard, as well.

1 CHAIRMAN KEESE: Staff, I'm sure that's
2 no problem, either?

3 MR. WORL: No. As we stated in our
4 assessment, we'd looked at both the
5 undergrounding, as well as the overhead issue in
6 our initial assessment. And, again, this is based
7 on discussions between the principals involved,
8 that we have no problem with it.

9 CHAIRMAN KEESE: Thank you.

10 MR. LYONS: Thank you.

11 CHAIRMAN KEESE: Thank you. Mr. Brindle
12 for the City of Escondido.

13 MR. BRINDLE: Good morning, Chairman
14 Keese, Members of the Commission. My name's
15 Jonathan Brindle, Assistant Planning Director for
16 the City of Escondido. I'm representing -- who
17 was designated by the City Council to speak at the
18 May 24th CEC informational hearing.

19 My letter to Bob Worl dated May 17th
20 included preliminary staff conditions from the
21 City of Escondido, as well as the preliminary
22 letter explaining those conditions. Both are
23 included in your staff assessment as appendix B.

24 These conditions were subsequently
25 endorsed by the City Council on May 23rd. With

1 the addition of one additional air quality
2 condition that we're requesting you apply, which
3 is distributed to you this afternoon. It was
4 referenced in Chairman Keese's decision on page 5.
5 A full copy was provided, and it was alternative
6 to.

7 Again, that was discussed by the City
8 Council on May 24th -- excuse me, the 23rd. On
9 May 24th Mayor Holtpseiler explained that the
10 CalPeak Project's importance, since it's located
11 on a visible parcel located at the gateway to the
12 City's last industrial undeveloped property known
13 as Quail Hills.

14 The City's desiring a high quality
15 business park which will provide high paying jobs
16 to the City of Escondido.

17 The City's carefully evaluating the
18 Quail Hills specific plan at this point to insure
19 that it maintains very high standards, as well as
20 stringent land use controls.

21 The City conditions that were provided
22 in the May 17th letter are intended to insure that
23 the CalPeak proposal is consistent with the Quail
24 Hills property and will not affect surrounding
25 properties in the area.

1 We're appreciative of CalPeak's
2 agreement to construct a ten-foot landscape berm
3 along the northern and western property lines, as
4 well as construct a five-foot landscape strip
5 along the eastern boundary. These were discussed
6 at a meeting yesterday in the City of Escondido
7 with the project proponents.

8 We're also very supportive of the
9 applicant's revision to underground the westerly
10 transmission lines for the first 100 feet west of
11 the property, as well as lowering the dead end
12 structure to the maximum extent feasible, which is
13 located in the northwestern portion, the arm that
14 would support the overhead lines.

15 We request that these measures be added
16 as specific conditions, or included clearly in the
17 record.

18 We're also asking that the Commission
19 include the previously requested noise mitigation
20 requirements, as well as require a deposit from
21 the applicant to insure compliance with air
22 quality standards.

23 As described in the May 17th letter,
24 section 17-228(c)(3) of the City's municipal code
25 places an additional 10 decibel noise mitigation

1 requirement on steady audible noise sources, such
2 as a whine, screech or a hum.

3 A provision in our code recognizes that
4 noise impacts can result even where otherwise
5 permitted noise levels are achieved because the
6 sound is continuous and distinctive.

7 As part of a previous power plant
8 approval in the City of Escondido, known as the
9 Ramco request, this provision was applied. The
10 City Council on May 23rd also determined it was
11 appropriate to apply it to this case.

12 The concern is that the CalPeak -- the
13 hope is that the CalPeak would not become a
14 problem for surrounding residential properties.

15 I should note that the noise studies
16 conclusion is qualified by the assumption that the
17 noise from the facility will not be considered as
18 having unacceptable characteristics.

19 I'd like to call to your attention
20 several sections of the proponent's noise study,
21 particularly page ii of the Pacific Noise Control
22 report dated April 2, 2001.

23 On that page it states: However, the
24 quality of the noise is judged by the City to have
25 unacceptable characteristics. The project would

1 exceed City noise criteria because the City's
2 noise ordinance criteria is 10 decibels, more
3 restrictive with these types of acceptable sounds.

4 On page 7 of the same noise study in
5 paragraph three it describes that there is no
6 frequency spectrum sound data available for the
7 turbine generator manufacturer. And it also cites
8 that total noise at low, mid and high frequency is
9 possible from the turbines and generators.

10 For these reasons we're requesting that
11 the Commission either apply the additional decibel
12 noise requirements or provide some security for
13 the implementation in the form of security which
14 would be collected at some point during the
15 construction process.

16 We believe that having the security in
17 place would expedite the resolution of any noise
18 issues and make it easier for the compliance
19 officer to require mitigation should he or she
20 find it necessary.

21 We would encourage the incorporation of
22 structural measures such as additional baffling to
23 reduce the height of any of the noise walls.

24 As you may have noted in the noise study
25 the contingency plan provided for variable wall

1 heights if that finding was made that the noise
2 was unacceptable, ranging from eight feet all the
3 way up to 30 feet. Certainly we would not suggest
4 30-foot walls if there were other design
5 alternatives available. But we would hope that
6 the issue is addressed in the form of a
7 contingency plan and bonding at least, if not
8 applied up front.

9 The second remaining condition requested
10 by the City Council deals with a deposit to insure
11 compliance with required air quality measures.
12 This condition was requested by the Mayor at the
13 May 23rd meeting. Again, I distributed a copy to
14 you this morning, resulted from the City Council's
15 desire to insure that a strong incentive is
16 provided to maintain compliance.

17 The City Council noted problems with a
18 recent case in Escondido where enforcement
19 mechanisms were not sufficient to protect against
20 numerous air quality violations.

21 The Council was concerned that there not
22 be an economic incentive to violate the noise
23 standards.

24 Again, I'd like to thank the CEC Staff
25 and the Commission for your consideration. And

1 I'd be happy to answer any questions regarding the
2 City's letter.

3 COMMISSIONER LAURIE: Question, Mr.
4 Chairman.

5 CHAIRMAN KEESE: Commissioner Laurie.

6 COMMISSIONER LAURIE: Sir,
7 clarification. Do the conditions on this project
8 meet or not meet the landscaping requests of the
9 City?

10 MR. BRINDLE: At this point there's no
11 landscaping that we're aware of on the western
12 boundary. So the answer would be no. But, the
13 discussion with the applicant indicated that that
14 would be provided and that would meet our
15 requirements.

16 COMMISSIONER LAURIE: Okay. Let me ask
17 the Project Manager, Robert, this project, if
18 approved, is going to be approved with a series of
19 conditions.

20 If conditions to not make reference to a
21 landscaping requirement then it is not a condition
22 of the project.

23 Is there anything specific that's on the
24 table today that is in a position of being adopted
25 as a condition? I certainly share the view that

1 because of the location of the project, and the
2 adjacency to the industrial park, that what it
3 looks like is, in fact, important. And I want to
4 make sure that remainders of the property are
5 properly protected by assuring minimal visual
6 impact.

7 What are we in a position to do today
8 regarding mitigation of visual impacts?

9 MR. WORL: My understanding is Brindle
10 is correct. The only issue is on that eastern
11 side, and there have been continuing discussions
12 between the applicant and Sempra Energy and the
13 City in that regard.

14 So, basically I would defer to one of
15 them to answer that question, or what the status
16 of that is regarding the eastern side. I
17 understand that there's been some resolution to
18 that issue. I would not object to adding that
19 appended as a specific condition.

20 COMMISSIONER LAURIE: Okay, I don't know
21 the directions. Is the eastern side important?

22 MR. BRINDLE: It's important to meeting
23 our criteria.

24 CHAIRMAN KEESE: It's currently
25 developed.

1 MR. BRINDLE: Excuse me.

2 CHAIRMAN KEESE: I'm sorry. The eastern
3 side is developed. This is a -- the site has
4 height differentials. The eastern side is 20 feet
5 below the plat level.

6 MR. BRINDLE: Yes.

7 CHAIRMAN KEESE: And there are trees at
8 the current time growing along there. But there
9 is a small commercial center off a dead-end street
10 down there. Is that what we're talking about now?

11 MR. BRINDLE: A five-foot landscape
12 strip with shrubs only would be necessary to meet
13 our landscape ordinance requirements. And that's
14 what we discussed yesterday with the applicant.

15 CHAIRMAN KEESE: Why don't we hear from
16 the applicant.

17 MR. LYONS: Yes, Mr. Brindle's correct.
18 We met yesterday, we discussed this and we did
19 agree to put in a five-foot strip of landscaping
20 with shrubs.

21 CHAIRMAN KEESE: Okay. With that, it
22 was my understanding, and I thought I heard, that
23 all of the landscaping, all the perimeters of this
24 project are taken care of.

25 MR. BRINDLE: Yes, it is --

1 CHAIRMAN KEESE: Okay, so we're --

2 COMMISSIONER LAURIE: Does the applicant
3 object to any condition requiring compliance with
4 the City's landscaping ordinance?

5 MR. LYONS: No, sir. We feel that we've
6 complied with the condition of the Energy
7 Commission and with the City's ordinance that's,
8 you know, incorporated that.

9 We prepared a landscape plan. We
10 submitted it for comment. We've made extensive
11 modifications based on the City's comment and
12 based on input from Sempra Energy Resources.

13 CHAIRMAN KEESE: Okay, --

14 MR. WORL: Commissioner Laurie, if I
15 might clarify my earlier actual misstatement. In
16 the conditions of certification visual number 3,
17 we state specifically that the project owner shall
18 prepare and submit to the City of Escondido for
19 review and comment, and to the CPM for review and
20 approval, a landscaping plan that complies with
21 City of Escondido landscape ordinance
22 requirements, which provide for any or all of the
23 following. And then it lists the specific.

24 COMMISSIONER LAURIE: Okay.

25 MR. WORL: So we do have, in fact, in

1 the conditions of certification something that
2 speaks specifically to the resolution of this
3 issue.

4 COMMISSIONER LAURIE: Let me move on to
5 noise. I'm getting some conflicting information.
6 Is this project in compliance or not in compliance
7 with City noise ordinance?

8 MR. BRINDLE: I'd be happy to answer.
9 It all depends on how you interpret a provision of
10 the code that deals with unacceptable noise.

11 To the degree it's not determined to be
12 unacceptable it would meet the noise limits at
13 each of the property lines. To the degree that
14 it's determined to be unacceptable, it would not
15 meet that requirement absent the noise walls which
16 are identified as a contingency in the applicant's
17 noise report.

18 COMMISSIONER LAURIE: And is
19 acceptability a subjective term or is there a
20 standard?

21 MR. BRINDLE: It's a subjective term.

22 COMMISSIONER LAURIE: Okay. And how
23 have we conditionally addressed the City's
24 concerns regarding noise? I know there are
25 specific conditions.

1 MR. WORL: There are specific conditions
2 of certification. Our engineering staff has
3 suggested that basically the equipment that's
4 planned, the mitigations that are already designed
5 are adequate to meet the City's standards.

6 And that upon commissioning should there
7 be a continuing problem or an existing problem,
8 that the best way to deal with it is to deal with
9 the specific offending piece of equipment, either
10 with shielding or insulation or some other form of
11 housing.

12 And that that is generally more than
13 adequate to deal with any existing noise, hum,
14 screech or hammer.

15 CHAIRMAN KEESE: Mr. Worl, are you
16 referring to Noise-3?

17 MR. WORL: Noise-3.

18 CHAIRMAN KEESE: Mr. Brindle, is Noise-3
19 adequate?

20 MR. BRINDLE: We were hoping to have a
21 bonding for that, since it leaves a great deal of
22 discretion to the post-construction standpoint.
23 And at that point if there were an issue, then the
24 design would start and there'd be no security for
25 it.

1 You could potentially address the issue,
2 but we would ask for more specificity.

3 CHAIRMAN KEESE: I hear that. I thought
4 Noise-3 was --

5 COMMISSIONER LAURIE: I've got to tell
6 you that Noise-3 may be okay for the applicant,
7 but it's certainly not satisfactory to me. And I
8 think it causes problems for an applicant and
9 other interested parties because it's amorphous.
10 It's one thing to be able to deal with a
11 complaint. And it's another thing to know what
12 standards must be met.

13 So, can you clarify for me whether or
14 not it is clear in this decision what the noise
15 standards are that must be complied with before
16 the CPM has a role to play. So if there is a
17 neighborhood complaint, or if the City alleges
18 that there's a concern about surrounding
19 development because of lack of compliance with
20 noise standards, are we in a position to measure
21 and say, yes, it is or it is not in compliance
22 with City noise ordinances?

23 MR. WORL: The applicant has supplied
24 the initial noise study. We had also asked them
25 to provide a baseline study at the nearest

1 impacted point, which is a residence about 1100
2 feet away.

3 We have a 25-hour noise study specific
4 from that site. And that would be the impact site
5 that we would be looking at specifically in terms
6 of any noise occurring either from construction or
7 from the commissioning of the plant.

8 So we do have measurable standards
9 against which to assess any effect from the
10 project, itself.

11 COMMISSIONER LAURIE: And, Robert, let
12 me apologize for my lack of understanding.

13 When we talk about measurable standards,
14 are those measurable standards a City's -- well,
15 let me put it even more simply. When we look at a
16 city's general plan, noise element of the general
17 plan, noise standards contained in the general
18 plan, is it staff's recommendation that this
19 project is consistent with the City's noise
20 element or other standards wherever they may be
21 contained?

22 MR. WORL: Again, our staff assessment
23 indicated that it is consistent with the City's
24 ordinance. And, again, as Mr. Brindle pointed
25 out, that their concerns are based on a subjective

1 rather than a specific potential impact.

2 And that the -- so basically if you're
3 looking at measurable versus subjective, we feel
4 that the standards are already there which would
5 indicate quickly anything that needed to be
6 mitigated. And that the CPM does, through the
7 conditions of certification, have the controls
8 necessary to insist on relatively immediate
9 response to those concerns.

10 COMMISSIONER LAURIE: The only reference
11 to a dba standard is Noise-1, which calls for no
12 excess of 45 during the evening hours. There's no
13 daytime, no reference to daytime noise standard.

14 CHAIRMAN KEESE: I believe -- is the
15 daytime noise standard 70?

16 MR. BRINDLE: At the industrial property
17 lines it's 70.

18 CHAIRMAN KEESE: It's 70. And this is
19 well below that.

20 COMMISSIONER LAURIE: Okay.

21 MR. WORL: The measured expected impact
22 was 1 decibel difference. I think the standard
23 was -- the baseline was, for night noise, was 58.
24 And I think that this came in at 59, if I'm not --
25 I don't have it right in front of me.

1 But the sound engineer indicated that
2 the one decibel increase was not a significant
3 number, and was --

4 COMMISSIONER LAURIE: Let me tell you
5 what my concern is. First of all, it's understood
6 that in these kinds of hearings, other than
7 Chairman Keese who heard the case, the rest of the
8 Commissioners don't have a lot of information
9 about it. So thus the questions.

10 What I'm trying to avoid is a
11 circumstance where you go into an area that may be
12 a developing area. Whether it may be developing
13 into industrial or residential, doesn't matter.

14 And you put in a use. And the use emits
15 noise. Well, what happens with that is that then
16 your surrounding development is limited because
17 the cumulative impact exceeds noise levels.

18 So I don't want this project, whether it
19 be visual or noise or traffic or anything else, to
20 inhibit surrounding development.

21 And that's my biggest concern. If I'm
22 way off the mark, and if that's not going to
23 happen, then that's great. But, I need some
24 understanding, or at least some comfort level in
25 that regard.

1 CHAIRMAN KEESE: Commissioner Laurie,
2 let me try to give you my opinion, which may give
3 you a comfort level.

4 This parcel of property sits elevated
5 about 30 feet over the road which is to the north,
6 and about 20 feet above the industrial or
7 commercial center that is about 300 feet to the
8 east.

9 It is backed on the back by a hill that
10 starts at approximately 25 or 30 feet -- it will
11 be right up against the hillside -- that rises.
12 Semptra's proposed power plant is over -- the 550
13 megawatt power plant is over the hill.

14 The west side, which is going to be
15 bermed and fenced, starts a 200-foot right-of-way
16 for power lines. And this commercial development
17 will take place up a hill that rises and departs.

18 The entrance, the access to that will be
19 a road on the other side of this 200-foot right-
20 of-way. So this property will be separate.

21 You will not be able to see the plant
22 from the street to the north. It will be
23 difficult to see the plant from the east, from
24 that commercial center, because of the slope of
25 this, the elevation of this property.

1 You will not be able to see it from the
2 south side because it's backed into a hill. The
3 only place you'll see it from is if this other
4 hillside becomes the industrial -- the commercial
5 center that is planned by the City.

6 I believe, you know, in my mind the need
7 for screening was marginal on a number of sides.
8 The west side was significant. I believe the
9 applicant has gone quite a ways with agreeing to
10 really isolate this property from any future
11 development, which is about the --

12 COMMISSIONER LAURIE: Okay, very
13 helpful, thank you.

14 Final question. Who is CalPeak?

15 MR. LYONS: CalPeak is a limited
16 liability corporation made up of United
17 Technologies, an affiliate of United Technologies
18 and DT Power.

19 COMMISSIONER LAURIE: Okay, thank you.
20 Thank you, Mr. Brindle.

21 MR. BRINDLE: Yes.

22 COMMISSIONER LAURIE: That's all I have.

23 CHAIRMAN KEESE: The applicant --

24 MR. LYONS: Mr. Chairman, if I might?

25 CHAIRMAN KEESE: Sure, and I just wanted

1 to indicate, I would like your statement, and then
2 I'm going to ask our staff. You have essentially
3 concurred with what you've heard here?

4 MR. LYONS: Yes, sir.

5 CHAIRMAN KEESE: The recommendations of
6 staff you have concurred with?

7 MR. LYONS: Yes. And I just wanted to
8 clarify that, you know, in our view there's no
9 lack of specificity about the noise standards, the
10 measurable noise standards that we need to meet in
11 City ordinances. They are at the nearest
12 residence 45 dB at night. During the day, 50
13 decibels. And at an industrial receptor, 708
14 decibels.

15 That there is, in addition to that, a
16 concern that if there's any continuous perceptible
17 noise on a 24-hour basis that we would have to
18 mitigate for that. And that we not provide, you
19 know, produce any discrete tone, whining or
20 screeching.

21 But I also need to point out that, you
22 know, we did a comprehensive noise study and
23 concluded that at the nearest residential receptor
24 we'd be at 41 dB, which is significantly lower
25 than the 45 standard, even at night.

1 It also concluded that any increase in
2 noise, ambient noise due to our operation, would
3 not be perceptible.

4 So, the standards are clear. There's
5 nothing in our noise study or practical experience
6 to provide any basis for concluding that we're not
7 going to meet the standards, and meet them, you
8 know, comfortably.

9 And, you know, certainly if, after
10 beginning operations, it turns out that we do not
11 meet the standards, we are committed to mitigate
12 appropriately.

13 So, we don't think that there's any
14 confusion about it. So, that's -- I don't think,
15 you know, that the standards aren't quite clear,
16 and you know, the studies indicate that we will,
17 in fact, meet those standards.

18 CHAIRMAN KEESE: Thank you.
19 Commissioner Pernell.

20 COMMISSIONER PERNELL: Mr. Chairman, it
21 seems to me that the City is agreeing, but they
22 want some assurances that you're going to meet
23 that. And I thought I heard that that insurance
24 could be in the form of some type of bond. Maybe
25 I could get the City back up here to --

1 CHAIRMAN KEESE: Well, Commissioner
2 Pernell, the City has asked basically for bonding
3 in two areas. They have asked for bonding on the
4 noise, just in case they have to do it. Or some
5 kind of bonding.

6 And they have also asked for bonding on
7 the air issues, which becomes slightly touchy
8 because we at committed, the Energy Commission is
9 committed through this process to make sure that
10 there is full compliance here.

11 This plant is going to be in compliance
12 or it's not going to operate. And so my
13 inclination is to resist -- it's an innovative
14 proposal, but I'm not aware that we've been asked
15 to do this before. And I'm not inclined to feel
16 that a bond is going to give any more assurance of
17 compliance than that which we commit to in every
18 project that we approve, that they will be in
19 compliance. Mr. Worl, am I wrong?

20 MR. WORL: No, you're absolutely
21 correct. The other thing is that there are
22 specific monetary penalties from the air pollution
23 district, as well, to implement this.

24 The other thing is, in reading the
25 proposal from the City they reserve unto

1 themselves the right to determine whether or not
2 there's been an air quality violation with the
3 potential of forfeiting a \$250,000 bond, based on,
4 again, a rather subjective something that has no
5 objective measure at this point in time. And that
6 also usurps the air quality district and the
7 Commission's role in this --

8 CHAIRMAN KEESE: I understand the
9 concern of the City, but Commissioner Pernell, I
10 would feel that I believe when I have voted to
11 site a power plant in the past I have felt that we
12 were committing to make sure that all terms were
13 complied with.

14 And so I think what I'd prefer, rather
15 than putting the bond together, is just to assure
16 the City that we will insist on compliance. And
17 we're just going to make sure it happens. The
18 bonding would be a redundant complication of a
19 process that has worked quite well in the past.

20 COMMISSIONER PERNELL: Let me ask staff,
21 is the City aware of our compliance program? That
22 is, if the applicant is not in compliance they can
23 call the Commission and -- or maybe I should ask
24 you, are you aware of our compliance program in
25 relationship to these facilities?

1 MR. BRINDLE: Yes, we have had several
2 discussions and we are aware of it.

3 COMMISSIONER PERNELL: And that is not
4 satisfactory?

5 MR. BRINDLE: The unique aspect of the
6 noise mitigation is the extent of the potential.
7 To the degree that it is determined to be
8 unacceptable there are significant additional
9 buffers and our concern was that that's a big
10 decision to be hanging out there up to three days
11 after the plant is operating to make that
12 determination as to whether the noise is
13 unacceptable.

14 Because if it is determined to be
15 unacceptable and distinguishable from other noise,
16 whether or not it meets the requirement then the
17 additional mitigation measures are required.

18 COMMISSIONER PERNELL: All right, but
19 that's being determined by the City, correct?

20 MR. BRINDLE: No, in this case it would
21 be deferred to the compliance manager.

22 COMMISSIONER PERNELL: Which is the
23 Commission.

24 MR. BRINDLE: Yes.

25 COMMISSIONER PERNELL: And, if, in fact,

1 that happens, then the Commission is obligated, as
2 Chairman Keese has said, to make sure that they're
3 in compliance or we can cease operation. Am I
4 correct with that? Maybe I should ask our legal
5 counsel.

6 MR. CHAMBERLAIN: Yes, Commissioner
7 Pernell. Normally you would have a bond to insure
8 if a party became insolvent or was unable to, you
9 know, follow through on an obligation that there
10 would be some other party to do that.

11 In this case, if we determine that they
12 need to do ceratin things and they say, well, it's
13 not cost effective for us to do those things, then
14 the result is the project closes down. In which
15 case there's no noise and no air pollution.

16 COMMISSIONER PERNELL: Thank you. Thank
17 you, Mr. Chairman.

18 CHAIRMAN KEESE: Thank you. I have
19 received a number of cards from people who
20 indicated they would be available for questions.
21 But nobody -- is there anybody in the audience who
22 was interested in speaking directly to this issue?
23 Is there anybody on the --

24 MR. ROWLEY: Joe Rowley with Sempra
25 Energy Resources. We have the property in escrow

1 on two sides of the project site. We are in a
2 joint venture with JRM Real Estate to develop an
3 industrial park, and within that industrial park
4 we would also propose on one of the sites a 550
5 megawatt natural gas fired combined cycle plant.

6 We plan on filing with the Commission
7 for that project later next month.

8 We expressed some concerns with regard
9 to the impact of this project, that is the CalPeak
10 project, on our business park. Primarily really
11 individual screening. We had requested a ten-
12 foot-high berm. The applicant has complied with
13 that.

14 We have also requested that the first
15 100 feet of the 69 kV leaving the site we
16 undergrounded. The applicant has also agreed with
17 that. That's actually being done at Sempra's
18 incremental expense. And that basically just
19 shows our commitment to making sure that the
20 industrial park is properly screened.

21 So, what I'd like to bring up though is
22 that these issues, especially the undergrounding
23 issue, is not really covered in a condition, but
24 is covered in an agreement that we have with
25 CalPeak and with the current property owner.

1 And also covered in that agreement is
2 use of the property that we have in escrow as lay
3 down space. And there are requirements in the
4 agreement that talk about clean up of the lay down
5 space once CalPeak is completed with it and so
6 forth.

7 What we would request is that the
8 Commission add a condition that basically makes
9 reference to the lay down agreement with these
10 other ancillary issues that are embedded in that
11 agreement, so that the compliance project manager
12 has the wherewithal to require enforcement of, for
13 example, the clean up of the lay down area and the
14 other --

15 CHAIRMAN KEESE: Is that okay with the
16 applicant?

17 MR. LYONS: Yes, sir.

18 COMMISSIONER LAURIE: I don't think it's
19 okay with me, Mr. Chairman.

20 CHAIRMAN KEESE: All right, Commissioner
21 Laurie.

22 COMMISSIONER LAURIE: Are you asking the
23 Commission to add as a condition the requirement
24 to act as an enforcing agent of a third-party
25 contract?

1 MR. ROWLEY: No. What we're asking is
2 for the technical things that are described in the
3 agreement that --

4 COMMISSIONER LAURIE: To be taken out of
5 the agreement and added on as conditions? I don't
6 want any reference to a private agreement. I'm
7 willing to take essential parts of that agreement
8 and add it as conditions independent of your
9 agreement. Because I don't know what else is in
10 it.

11 So, if there's essential elements of
12 your agreement that you all have agreed to and
13 should be referenced, independent of the
14 agreement, into our conditions, then that's how
15 that should be handled.

16 MR. ROWLEY: That would be fine with us.

17 COMMISSIONER LAURIE: We need to know
18 specifically what those might be.

19 CHAIRMAN KEESE: Right, as we come to
20 the end of this I'm not going to feel comfortable
21 unless I understand what we're voting on.

22 MR. ROWLEY: I could read into the
23 record, it's very short.

24 CHAIRMAN KEESE: Let's hear from staff
25 first.

1 MR. WORL: Mr. Ogata has just advised me
2 that an easy way to handle this is to ask the
3 applicant to provide a revised project description
4 which includes these three issues. And that we
5 can then quickly develop, you know, the necessary
6 conditions of certification that are appropriate
7 to those --

8 CHAIRMAN KEESE: What does quickly mean,
9 as the clock passes 10:45?

10 MR. WORL: The thing is that these
11 issues are basically resolving points that have
12 already been considered in analysis by the staff.
13 And that basically this is basically an 11th hour
14 revision of basically a few sentences, I think,
15 would take care of it.

16 CHAIRMAN KEESE: Mr. Ogata, we're going
17 to take up the Pegasus Power. Are you suggesting
18 that perhaps if we defer the vote on this for 30
19 minutes that that would take care of this? Or are
20 we going to try to read it into the record right
21 here, or what are we going to do?

22 MR. ROWLEY: I could read this into the
23 record in probably two minutes.

24 MR. OGATA: Well, Commissioner, I guess
25 my only solution is however they want to handle

1 it, the applicant and Mr. Rowley can handle this,
2 how they want to change the project description to
3 include these items, the Commission can just
4 simply add a condition that the applicant will do
5 what it says it's going to do, including with
6 respect to the project description.

7 So that's typically how we've handled
8 some of these things in the past. You know,
9 whatever the applicant says in their AFC, the
10 condition is you will do what's in the AFC. And
11 then the additional conditions that staff puts on
12 and the Commission adopts, are those things that
13 are specifically either required in addition to
14 what's in the AFC by staff, or those items that
15 staff believes are so critical that we want to
16 highlight those things.

17 So the general condition is they do what
18 they say they're going to do. So as long as we
19 understand by the project description what those
20 things are, those things are covered.

21 CHAIRMAN KEESE: Commissioner Pernell
22 has a question.

23 COMMISSIONER PERNELL: Well, I'm not
24 understanding why this is even an issue. It
25 sounds to me like the two parties have a contract.

1 You've agreed to do what you're going to do. Why
2 bring the Commission into this. You're two
3 business entities, and I'm sure you trust each
4 other.

5 I don't think that we need to be
6 involved in it. I think this goes to what
7 Commissioner Laurie was saying, it sounds like to
8 me it's a contract between two business entities
9 that somehow we'll be asked to bring into our
10 proceedings to help enforce it.

11 And I don't know that that's needed. I
12 mean --

13 MR. ROWLEY: Maybe if I could just
14 describe the nature of that. They read very much
15 like normal conditions that you find in a
16 Commission decision. It's just that during this
17 21-day process it's been hard to incorporate all
18 this into the --

19 MR. LYONS: May I just suggest
20 something?

21 CHAIRMAN KEESE: Yes, what I want is
22 something. We have three Commissioners here. You
23 need all of us here to get this out.

24 MR. LYONS: I understand, and --

25 CHAIRMAN KEESE: And I want to know what

1 I'm voting on. I have a proposal, I have an
2 errata, I have two additional items that you
3 brought up that everybody concurred in. And we
4 now have a fourth condition.

5 MR. LYONS: Well, what I wanted to
6 suggest, Chairman, is --

7 CHAIRMAN KEESE: Can you hold for --
8 we're going to take 30 seconds here.

9 (Pause.)

10 CHAIRMAN KEESE: Okay, let's go forward.

11 MR. LYONS: I was just suggesting to Mr.
12 Rowley, and I'd like to suggest to the Commission,
13 that the three salient issues here are the
14 restoration of the lay down agreement, which is
15 already in the project description; the landscape
16 plan, which has been included; and the
17 undergrounding of the interconnect, which I
18 requested that we include in the project
19 description today.

20 And it's my belief that those issues are
21 already included in the project description.

22 MR. ROWLEY: I guess I would say that
23 including them in the project description does not
24 make them conditions that the compliance project
25 manager really has traction to be able to make

1 sure that they happen.

2 CHAIRMAN KEESE: Okay, staff, would --
3 Mr. Ogata, you indicated that if we -- what was
4 your suggestion that we indicate?

5 MR. OGATA: Well, I believe what Mr.
6 Rowley is stating is that he's familiar with our
7 process. Again, the reasons why we have
8 particular conditions is so that our compliance
9 unit can track those things that are very
10 important.

11 We obviously try to insure that
12 everything that's in the project description is
13 carried out, but because those things aren't
14 necessarily highlighted we don't necessarily pay
15 extreme close attention to those items.

16 So, to the extent that the Commission
17 wants to insure that those items are tracked by
18 our compliance unit, we need to put a conditions
19 on. To the extent that we're comfortable with the
20 fact that the applicant will carry these things
21 out and the compliance unit can be made aware of
22 what the project's supposed to look like when it's
23 built, then the project manager can then just go
24 out and take a look and, you know, make sure that
25 those things are being done.

1 CHAIRMAN KEESE: My fellow
2 Commissioners, are we --

3 COMMISSIONER PERNELL: Mr. Chairman, I
4 would still submit that if the applicant is not
5 carrying those out our compliance department will
6 know that, because they're going to get a call
7 from someone to say that it's not being carried
8 out.

9 So, again, I don't want to -- we're
10 being asked to do a couple of things that I'm not
11 that comfortable with, and we haven't been asked
12 to do in other siting proceedings.

13 And, again, if it's in the description
14 of the project, and it's not being done,
15 somebody's going to let us know. And I would make
16 that same argument with the City. That if the
17 noise ordinance is not being done they're going to
18 call the Commission for the compliance officer or
19 department to go out there and investigate that.

20 I don't know that we're setting
21 precedent here, but I don't want to get involved
22 in third-party agreements for us to be the
23 enforcer of that. That's not our role.

24 CHAIRMAN KEESE: I believe we've already
25 had reasonable concurrence in the undergrounding

1 issue. We've taken care of that one.

2 So the last two, the other two are the
3 clean up of the lay down area and --

4 COMMISSIONER PERNELL: And the
5 landscaping.

6 MR. ROWLEY: The undergrounding is
7 regarded as a condition of --

8 CHAIRMAN KEESE: And the what?

9 MR. ROWLEY: The undergrounding of the
10 69 kV is considered to be a condition --

11 CHAIRMAN KEESE: Right, condition.

12 MR. ROWLEY: Then we're okay with that.
13 The berming has already been included as a
14 condition. And the last item was the restoration
15 of the lay down area, including clearing of any
16 hazardous --

17 CHAIRMAN KEESE: Okay, I think --

18 MR. ROWLEY: -- materials, so --

19 CHAIRMAN KEESE: -- we're about as far
20 as --

21 MR. ROWLEY: The only other issue that
22 we've raised is because of the unique market niche
23 that this project and others like it occupy, we
24 expect that they'll be economically viable for the
25 next couple of years. But may or may not be

1 economically viable thereafter.

2 And so there is elevated risk that this
3 project, in particular, and this sort of project
4 in general, could become derelict and just
5 abandoned at some point in the future.

6 And my understanding is that the
7 Commission has policies and procedures in place in
8 the compliance process that make sure that if a
9 facility is abandoned that closure provisions will
10 come into play.

11 We'll be looking to the compliance unit
12 and the Commission to deal with that.

13 CHAIRMAN KEESE: Correct. We take it --
14 once it's licensed we take it through.

15 MR. ROWLEY: And those are our issues.
16 We appreciate the staff's --

17 COMMISSIONER LAURIE: Can I have an
18 identification of the condition? Let me get
19 staff's attention.

20 CHAIRMAN KEESE: Commissioner Laurie
21 would like --

22 COMMISSIONER LAURIE: I'm interested in
23 the identification of the condition that deals
24 with termination of the project.

25 MR. WORL: My understanding was that

1 it's in the general compliance section that
2 basically the closure plan becomes a part of this
3 whole process.

4 General conditions for facility closure
5 is on page 51 of the staff assessment. In order
6 to insure that a plant facility closure does not
7 create adverse impacts, plant closure must be
8 consistent with all applicable laws, ordinances,
9 regulations and standards, et cetera.

10 COMMISSIONER LAURIE: Okay, is there a
11 reference in the decision to the adoption of the
12 staff assessment? There normally would be.

13 HEARING OFFICER GEFTER: Commissioner
14 Laurie, Susan Gefter, Hearing Officer. The third
15 paragraph of the proposed decision, the last
16 sentence, the Chairman recommends certification of
17 the project under the limitations presented as
18 conditions contained in this proposed decision and
19 the staff assessment incorporated herein by
20 reference.

21 And, again, throughout the decision we
22 also reference the staff assessment and the
23 conditions contained therein.

24 COMMISSIONER LAURIE: From now on I
25 would ask for clearer language, specifically

1 incorporating the conditions and the staff
2 assessment into conditions on the project in one
3 sentence in English.

4 Okay, thank you.

5 MR. ROWLEY: We appreciate the
6 Commission's attention in addressing these issues.
7 And we've done a lot of work in the last 21 days,
8 and know the applicant and the Commission Staff
9 has done even more --

10 CHAIRMAN KEESE: We understand, and
11 today is an exhibition of one of the problems of
12 the 21-day process, that we are doing a number of
13 things on the run. And we want to make sure it's
14 right.

15 MR. ROWLEY: Thank you.

16 CHAIRMAN KEESE: Let me ask at this time
17 if there's anybody on the phone who wishes to
18 comment on this case.

19 Mr. Ogata, Mr. Worl, would you tell us
20 what you believe we have -- I hope we have an
21 understanding of what we have in front of us.
22 That is a decision with an errata --

23 MR. WORL: Correct.

24 CHAIRMAN KEESE: -- with two additional
25 conditions that we've heard?

1 MR. WORL: In the errata, the errata --

2 CHAIRMAN KEESE: Well, is everything
3 included in the errata?

4 MR. WORL: The errata is one
5 clarification, and the addition -- or one
6 verification of a condition of certification. And
7 the other one is the addition of a condition of
8 certification for the electrical engineering with
9 the verification. That's on the errata.

10 The other is basically the three, what
11 we talked about as being possible within the -- by
12 modifying the project description slightly, would
13 incorporate the concerns of Mr. Rowley.

14 CHAIRMAN KEESE: All right. With
15 that, --

16 MR. WORL: One other thing is that we
17 had been asked yesterday late to clarify the name
18 of the applicant as being CalPeak Power -
19 Enterprise, LLC.

20 CHAIRMAN KEESE: I think we can handle
21 that one of the editorial nature.

22 (Laughter.)

23 CHAIRMAN KEESE: Okay, that's what we
24 have in front of us. Do I have a motion to adopt?

25 COMMISSIONER PERNELL: Mr. Chairman, I

1 would move.

2 CHAIRMAN KEESE: Commissioner Pernell
3 moves.

4 COMMISSIONER LAURIE: Second.

5 CHAIRMAN KEESE: Commissioner Laurie
6 seconds. All in favor?

7 (Ayes.)

8 CHAIRMAN KEESE: Opposed? Adopted three
9 to nothing. Thank you.

10 One down. Number two, Pegasus Power
11 Partners LLC. Consideration and possible adoption
12 of the Committee's proposed decision for the
13 Pegasus Project, docket number 01-EP-9, a 45-
14 megawatt power plant. Commissioner Pernell.

15 COMMISSIONER PERNELL: Mr. Chairman, we
16 reviewed the proposed Pegasus Project under the
17 Commission's emergency siting process. The
18 Committee conducted a hearing on May 16th in the
19 City of Chino.

20 My proposed decision was published June
21 5th. The decision was delayed by one week for the
22 development of mitigation in the area of
23 biological resources.

24 Prior to issuing the staff assessment,
25 staff determined that the project would pose a

1 significant impact on hawks and owls nesting in
2 the area.

3 In mitigation the applicant moved the
4 proposed site 600 feet northeast of the original
5 location.

6 The proposed decision recommends
7 certification of the Pegasus Project which is a
8 180 megawatt simple cycle natural gas fired power
9 plant to be located in the City of Chino on the
10 grounds of the California Institute for Men.

11 The site is part of a larger parcel
12 owned by the State of California. The Department
13 of General Services has leased the site to the
14 applicant for a period of 35 years.

15 According to the terms of the lease the
16 applicant is obligated to offer its generated
17 electricity to DWR, Department of Water Resources,
18 before selling on the open market.

19 In accordance to the record, applicant
20 is currently negotiating a contract with the
21 Department of Water Resources to sell the
22 electricity to California.

23 In this regard -- are there
24 representatives of the applicant here? In this
25 regard, Mr. Chairman, I have a couple of questions

1 for the applicant. And then I'll allow staff to
2 do its presentation.

3 CHAIRMAN KEESE: All right. Identify
4 yourself for the record.

5 MR. VANECH: Dean Vanech, President of
6 Delta Power Company, which is the parent of
7 Pegasus Power.

8 COMMISSIONER PERNELL: Is there an
9 agreement with DWR?

10 MR. VANECH: Not -- no, there's no final
11 agreement with DWR. In fact, we're meeting with
12 them this afternoon to try to push that process
13 forward quickly.

14 COMMISSIONER PERNELL: And according to
15 the record, in terms of the lease, it's predicated
16 on that, am I correct?

17 MR. VANECH: Well, yes, the lease
18 stipulated that in a sense the state gets the
19 first right to buy the power.

20 COMMISSIONER PERNELL: First right,
21 okay.

22 MR. VANECH: And, yes, that is correct.

23 COMMISSIONER PERNELL: That's fine. And
24 my other question deals with the selective
25 catalytic reduction, SCR. When will that be

1 installed?

2 MR. VANECH: We are hopeful -- well, the
3 goal is to have it installed by the end of
4 September or early October. And in fact,
5 yesterday we had an all-day meeting with our
6 contractor, and they feel reasonably confident,
7 although not certain, that they will be able to
8 meet that date.

9 So actually we're getting a favorable
10 influence, if you will, on that production
11 schedule --

12 COMMISSIONER PERNELL: Great.

13 MR. VANECH: -- from that vendor who
14 supplies that equipment.

15 COMMISSIONER PERNELL: And what about
16 your emission reduction credits? I'm assuming
17 that's South Coast, I think?

18 MR. VANECH: It is South Coast, and
19 we're working with our environmental consultants
20 and attorneys to finalize that. And I can't tell
21 you whether everything's finalized yet. Bob? No,
22 not yet. But it will be in place obviously prior
23 to operation.

24 COMMISSIONER PERNELL: Okay. And final
25 one. I notice that you have some wastewater

1 discharge, and that is -- describe that for me in
2 terms of the discharge.

3 MR. VANECH: The discharge will be
4 principally sewage discharge. And then what we
5 will do is hook up to the adjacent cogeneration
6 facility into their sewer discharge pipe.

7 In fact, Delta Power manages and owns a
8 substantial interest in the OLS Cogeneration
9 facility which is next door.

10 COMMISSIONER PERNELL: So that wouldn't
11 be a -- and that's acceptable to all parties?

12 MR. VANECH: Yes.

13 COMMISSIONER PERNELL: And finally, will
14 the facility be operational by September 30th?

15 MR. VANECH: Yes. Again, the emphasis
16 of our meeting with our contractor yesterday was
17 to assure they can meet schedule. And that
18 they've given us every assurance that they will be
19 able to meet schedule barring any, you know,
20 crazy, unforeseen types of things, but, yeah, they
21 can --

22 COMMISSIONER PERNELL: Unless you find
23 some owls sits on their feet on the other side of
24 the proposed site.

25 MR. VANECH: That I have little control

1 over.

2 (Laughter.)

3 MR. VANECH: But, no, we feel very
4 comfortable with the schedule. We have, just for
5 the record, we have purchased the gas turbines.
6 They will be shipped in early July to the site.
7 We have paid a substantial amount of money to
8 Southern California Edison and Southern California
9 Gas Company to insure that those hook-ups will be
10 ready to go in order to meet that date.

11 COMMISSIONER PERNELL: Thank you. Mr.
12 Chairman, would you indulge staff.

13 MR. KENNEDY: My name is Kevin Kennedy
14 and I'm the Siting Project Manager for Energy
15 Commission Staff on the Pegasus Project.

16 We have completed a very thorough review
17 of this project, and as Commissioner Pernell
18 noted, over the course of that review we did
19 discover that there were some biological issues
20 that needed to be addressed that otherwise could
21 have affected the schedule for this project.

22 As a result of our working with the
23 Department of Fish and Game and the Department of
24 Fish and Wildlife and the applicant, the applicant
25 opted to a small move of the project location,

1 approximately 600 feet to the northeast.

2 We are satisfied, and the other resource
3 agencies are satisfied that that move will take
4 care of avoiding possible impacts to the hawks and
5 owls that were on the project site.

6 There is some concern, continuing
7 concern about the possibility of burrowing owls
8 along the transmission route. However, mitigation
9 has been included in the biological conditions of
10 certification to address that in a way that should
11 allow the project to go forward without any
12 further delay in the project time line.

13 Given all of that, the staff's
14 assessment of this project is that if it is
15 permitted with the conditions as included in the
16 staff assessment and in the proposed decision,
17 that there will not be any unmitigatable impacts
18 on the environment. And that there will be no
19 significant impacts of concern in terms of public
20 health or safety.

21 There is one errata that I believe was
22 distributed to the Commissioners this morning. It
23 is the same as one of the two errata that were
24 included in the previous case. Simply laying out
25 conditions for the synchronization of the facility

1 with the grid consistent with comments we have
2 received from the Independent System Operator, in
3 order to assure that that happens in a timely and
4 smooth way.

5 So with that one addition, staff concurs
6 in the proposed decision and heartily supports the
7 approval of the project.

8 COMMISSIONER PERNELL: Thank you, Mr.
9 Kennedy. Mr. Chairman.

10 CHAIRMAN KEESE: Is there anyone in the
11 audience who cares to speak to this issue? Any
12 Commissioners?

13 Commissioner Pernell.

14 COMMISSIONER PERNELL: Mr. Chairman,
15 with the clarifications offered by the applicant
16 and staff I move that the Commission adopt the
17 proposed decision on the Pegasus Project with the
18 clarifications and the errata as amendments.

19 CHAIRMAN KEESE: Motion by Commissioner
20 Pernell.

21 COMMISSIONER LAURIE: Second.

22 CHAIRMAN KEESE: Second by Commissioner
23 Laurie.

24 MR. BOYD: Is there an opportunity for
25 the people on the phone to speak before you vote?

1 CHAIRMAN KEESE: Sure. Mr. Boyd.

2 MR. BOYD: Okay, this is Mike Boyd of
3 CARE.

4 COMMISSIONER PERNELL: Good morning, Mr.
5 Boyd.

6 MR. BOYD: Sent you guys a notice in
7 regard to this project and the notification of the
8 prisoners at the California Mens Institution. Did
9 you all receive that and have an opportunity to
10 review it?

11 COMMISSIONER PERNELL: Yes.

12 MR. BOYD: I also made available to you
13 some representatives from the prisoners; I don't
14 know if they're still on the line or not.

15 MR. NUNN: Yeah, I'm still on the line.
16 My name's Dorsey Nunn. And I, you know, before
17 you all voted I'm going to object that I don't
18 think the prisoners had any input in this
19 proposition about siting a power plant clearly
20 right on top of them without any input.

21 MR. BOYD: Now, so it's not really
22 necessary basically what we did notify you of this
23 is for is so that we can create an administrative
24 record so in case you guys do go ahead and approve
25 this without providing the opportunity we can

1 challenge you.

2 And I just got through listening to your
3 presentation on your staff assessment which I just
4 got through perusing, and I notice that in the
5 staff assessment under environmental justice you
6 don't list any of the demographic information on
7 the prison population.

8 I did speak with the project manager
9 about this, and I was curious to know if any
10 subsequent information has been derived on the
11 demographics of the prison population there.

12 MR. KENNEDY: This is Kevin Kennedy. We
13 did speak about that issue and I did confirm that
14 the census data that we use in reviewing the
15 environmental justice potential populations does
16 include the prison population.

17 So, as we discussed potential
18 environmental justice impacts in the staff
19 assessment we do note that there are a number of
20 census tracts which include greater than 50
21 percent minority populations. But because staff's
22 assessment is that the project, given the
23 conditions included in the staff assessment, would
24 not have off-site impacts that we do not believe
25 that there's an environmental justice impact,

1 though there are populations that potentially
2 could be of concern in the area.

3 MR. BOYD: So, is there going to be any
4 subsequent information added to the staff
5 assessment to reflect that?

6 MR. KENNEDY: I was summarizing the
7 environmental justice section in the staff
8 assessment.

9 MR. BOYD: Oh, okay.

10 MR. KENNEDY: I guess the one thing that
11 was not explicitly stated in the staff assessment
12 was -- actually, let me double check whether --
13 the staff assessment does note that there are a
14 number of census tracts within three miles of the
15 project site with greater than 50 percent minority
16 population. And that does include the census
17 tract that includes both the project and the
18 prison, itself.

19 MR. BOYD: Okay. Okay, now, I had
20 another question regarding the biological
21 resources. It states that there were two species,
22 and one was the burrowing owl. What was the other
23 one? I didn't catch the second species.

24 MR. KENNEDY: There are two species of
25 hawks that were nesting in the trees on the

1 original project site, Cooper's hawks and redbtail
2 hawk.

3 MR. BOYD: So my question is has the
4 U.S. Fish and Wildlife Service been notified of
5 this, and is there any requirement on your part to
6 do a section 7 consultation with the U.S. Fish and
7 Wildlife Service, since you have reported these
8 species present?

9 MR. KENNEDY: None of the three species
10 involved are actually threatened or endangered
11 species under the U.S. Endangered Species Act.
12 But we have been working in close consultation
13 with the U.S. Fish and Wildlife to insure that
14 impacts to these species can be appropriately
15 mitigated.

16 And mitigation for the hawks, in
17 particular, was to move the project site so that
18 the trees did not need to be removed.

19 MR. BOYD: So, in fact, then, what your
20 answer -- your answer then is that there is no
21 section 7 consultation required?

22 MR. KENNEDY: I believe that's correct,
23 yes.

24 MR. BOYD: Okay. I guess I'm done with
25 my questions, and I just wish to let the record

1 reflect that we object to this project because of
2 the reason we enumerated in our written objection
3 to you.

4 And I wish you would give an opportunity
5 for the other folks that are on the line to
6 explain their condition and why it's important to
7 them that they be given an opportunity to have
8 input into the matter.

9 CHAIRMAN KEESE: All right. Whatever
10 order you have. I have a Dorsey Nunn?

11 MR. NUNN: Yes, you do. And I called
12 because I think that our organization has been
13 handling present concerns for approximately 25
14 years. And at the pace in which this thing is
15 moving we know the prisoners wasn't contacted and
16 asked for any input, a community of predominately
17 black and brown people.

18 We think it's outrageous that this
19 project would continue without any input
20 whatsoever, without any real notification. If I
21 hadn't of stumbled across this information I doubt
22 if anybody in the prisoner rights movement would
23 even knew that you was thinking about siting a
24 power plant on the prison grounds without input.

25 So, if anything, I'm asking for a

1 continuance so we can have input.

2 CHAIRMAN KEESE: Mr. Nunn, the Energy
3 Commission siting of power plants in the past has
4 been a very measured step-by-step approach. With
5 the declaration of an electricity emergency we
6 were ordered to site power plants in a 21-day
7 process.

8 That obviously is not a measured
9 process. It obviously requires us to move
10 reasonably fast. We do not sacrifice
11 environmental or environmental justice concerns.
12 Staff does a fatal flaw analysis of all the
13 projects. And in this case, the result was the
14 project moved.

15 With that, staff has indicated there are
16 no impacts. And you have heard staff's suggestion
17 that there is no environmental justice concern in
18 this case.

19 We recognize acutely that it's difficult
20 to do it in 21 days. It's extremely difficult for
21 the staff; it's difficult for this Commission.
22 But those are the parameters under which we're
23 operating.

24 MR. NUNN: I can recognize your
25 difficulty in terms of the staff and the

1 Commission. I can recognize that under any other
2 circumstances the siting of a power plant would
3 probably have somebody that can drive down and
4 represent themselves.

5 In this situation there was no
6 notification. There was not an opportunity to
7 have public input to this process. At least where
8 it's being sited.

9 COMMISSIONER PERNELL: This is
10 Commissioner Pernell. I do think that the prison
11 officials were notified. And so there was
12 notification. Now, whether -- I'm not sure that
13 we're obligated to notify every prisoner in the
14 facility. But the proper authorities were
15 notified.

16 MR. BOYD: Commissioner Pernell, this is
17 Mr. Boyd. As part of my --

18 CHAIRMAN KEESE: Mr. Boyd, Mr. Boyd,
19 we're --

20 MR. BOYD: That's fine, --

21 CHAIRMAN KEESE: -- Mr. Nunn, we have to
22 stick with Mr. Nunn.

23 MR. BOYD: That's fine, I'm sorry.

24 CHAIRMAN KEESE: Okay, --

25 MR. BOYD: When there's an opportunity

1 please give it to me.

2 MR. NUNN: All right. I think prison
3 officials were notified, but I don't think that
4 the community that's going to be impacted by this
5 plant was notified. And I think it's two
6 different people that you're notifying.

7 And you feel like your obligation only
8 extend to the officials at the prison, which is
9 the State of California, saying the State of
10 California need to notify themselves as the entity,
11 as opposed to the people who live in the area.

12 I think that I still would object. I
13 don't think that, you know, simply notifying the
14 warden and agreed upon placing a power plant have
15 nothing to do with the hundreds of people there
16 that be in that area.

17 COMMISSIONER LAURIE: Mr. Chairman, --

18 CHAIRMAN KEESE: Commissioner Laurie.

19 COMMISSIONER LAURIE: -- this is
20 Commissioner Laurie. I'm not going to require
21 notice to prisoners, individual prisoners or their
22 agencies. I believe notice to appropriate prison
23 authorities was satisfactory and I'm prepared to
24 take action on this project with the notice that
25 was provided.

1 And I would ask whether there's any
2 additional comment from the public. If not, I'm
3 ready to call the question.

4 MR. BOYD: I have some additional
5 information --

6 CHAIRMAN KEESE: I have a Heidi Strupp.
7 Were you intending to speak?

8 (No response.)

9 CHAIRMAN KEESE: Mr. Boyd, for a final
10 closing comment. A final closing comment?

11 MR. BOYD: Okay. I just wanted to point
12 out that as part of this notice that I provided
13 you, I also -- is a California Public Records Act
14 request on any information that the Commission had
15 on the notice that was provided.

16 Dave Mundstock provided me the email,
17 the list of parties notified, and nowhere on that
18 list does it include the prison directly. The
19 only government agencies listed are the City of
20 Chino Hills and the State of California,
21 Department of General Services.

22 So, just for the record, what I was
23 provided by the Commission Staff in regards to our
24 records request on who was notified, it does not
25 include official notice to the prison, itself.

1 COMMISSIONER LAURIE: Mr. Chairman,
2 question of --

3 CHAIRMAN KEESE: Commissioner Laurie.

4 COMMISSIONER LAURIE: -- staff. How
5 close is the prison facilities to this project?

6 MR. KENNEDY: The project is on the
7 prison land. The closest prison facilities would
8 be, I believe the minimum security barracks that
9 are approximately 900 feet to the south.

10 CHAIRMAN KEESE: So the prison system
11 was a party to --

12 MR. KENNEDY: The notification of the
13 Department of General Services on the formal
14 notice was to them, as the formal manager of
15 property for the State of California land that is
16 owned.

17 The overall planning of this project has
18 gone forward with the active involvement of the
19 Department of Corrections, as well as the
20 Department of General Services. I believe that
21 the lease, which I've seen a draft version of,
22 includes explicit language that any such project
23 would only be able to move forward with the
24 approval of the Department of Corrections.

25 We have also just been handed by the

1 applicant a copy of the signed lease with all of
2 the signatures except Pegasus' partners. But it
3 includes the signature on the lease of Lori
4 DiCarlo, the Warden of the California Institute
5 for Men at Chino.

6 CHAIRMAN KEESE: Thank you. We've noted
7 your objection, Mr. Boyd. We have evidence in
8 front of us.

9 Is there anyone else in the audience who
10 cares to speak? Anybody else on the phone who
11 cares to speak?

12 MR. VANECH: I would just like to
13 clarify one thing. With respect to the delivery
14 of those turbines, three of the units will be
15 shipped in early July, with the fourth to be
16 shipped sometime in mid December. I just wanted
17 to clarify that, it wasn't clear before.

18 COMMISSIONER PERNELL: Yes, thank you.

19 CHAIRMAN KEESE: Thank you. And we have
20 a motion and a second.

21 All in favor?

22 (Ayes.)

23 CHAIRMAN KEESE: Opposed? Adopted three
24 to nothing. Thank you.

25 MR. BOYD: Thank you.

1 CHAIRMAN KEESE: Item 3, Valero
2 Cogeneration Project. Possible approval of the
3 Executive Director's data adequacy recommendation
4 for the Valero Cogeneration Project AFC. Staff.

5 MR. CASWELL: Yes, I'm Jack Caswell,
6 Siting Project Manager for the California Energy
7 Commission assigned to the Valero Cogeneration
8 Project.

9 This project was submitted on May 7th by
10 the Valero Refining Company of Benecia. Its
11 intent is to be a 102 megawatt simple cycle
12 generating process with a heat recovery system
13 providing steam to the refinery process.

14 They intend to have the first unit on
15 line prior to the summer of 2002. And the second
16 unit running by the end of the year.

17 Staff is recommending a four-month
18 process for this project based on the requirements
19 that we have recently adapted for a four-month
20 licensing facility.

21 At this time the staff is recommending
22 that the project is data adequate, and we'd like
23 to proceed with our discovery phase and some staff
24 analysis.

25 COMMISSIONER LAURIE: Mr. Chairman, I

1 move staff recommendation.

2 COMMISSIONER PERNELL: Second.

3 CHAIRMAN KEESE: A motion and a second.

4 Any discussion in the public? Anyone on the phone
5 here to comment on this?

6 Hearing none, all in favor?

7 (Ayes.)

8 CHAIRMAN KEESE: Opposed? Adopted three
9 to nothing.

10 Thank you. Valero is on its way.

11 Item 4, Valero Cogeneration Project.

12 Possibly approval of a Committee for the Valero
13 Cogeneration Project. Commissioner Pernell, I'd
14 appreciate a motion that Commissioner Rosenfeld be
15 lead and Commissioner Laurie be second on the
16 Valero Project.

17 COMMISSIONER PERNELL: Mr. Chairman, it
18 would give me pleasure to move that motion.

19 CHAIRMAN KEESE: Motion.

20 (Laughter.)

21 CHAIRMAN KEESE: I'll second that
22 motion.

23 COMMISSIONER LAURIE: Point of order,
24 Mr. Chairman. How many votes do you need?

25 (Laughter.)

1 CHAIRMAN KEESE: We'll hope. All in
2 favor?

3 (Ayes.)

4 CHAIRMAN KEESE: Opposed? Adopted three
5 to nothing.

6 Thank you.

7 Commission Committee and Oversight.
8 Chief Counsel.

9 MR. CHAMBERLAIN: Yes, Mr. Chairman.
10 There is one item, and that is that I'm not sure
11 if the Commission realized, but there was an
12 Environmental Appeals Court appeal filed on the
13 Three Mountain Project. And we've just gotten the
14 decision from EAB which has rejected the appeal.
15 And so the project can go forward free of that.

16 COMMISSIONER LAURIE: And that was an EJ
17 issue, isn't that right, Mr. Chamberlain?

18 MR. CHAMBERLAIN: Yes.

19 COMMISSIONER LAURIE: Yes.

20 MR. CHAMBERLAIN: I we defended the --

21 COMMISSIONER LAURIE: Did the decision
22 go into detail at all? Did the decision have a
23 discussion about the issue?

24 MR. CHAMBERLAIN: I'm going to have to
25 admit that I just got the decision and haven't had

1 an opportunity to read it, so --

2 COMMISSIONER LAURIE: Could you just
3 disseminate copies of that?

4 MR. CHAMBERLAIN: Certainly.

5 COMMISSIONER LAURIE: Thank you.

6 COMMISSIONER PERNELL: Actually a
7 summary of the decision would help me, rather than
8 the whole document.

9 MR. CHAMBERLAIN: I'll provide both.

10 COMMISSIONER PERNELL: Although
11 Commissioner Laurie might need the whole document.

12 CHAIRMAN KEESE: It's bedtime reading.

13 Mr. Larson, you've asked for an
14 executive session after this session. Do you have
15 anything to report in this session?

16 MR. LARSON: No.

17 CHAIRMAN KEESE: The executive session
18 will satisfy?

19 MR. LARSON: The executive session,
20 there are two things that I'd like to propose.
21 One is an executive session, and the other thing
22 is the continuation session where we'll talk a
23 little bit about the budget, what's going on in
24 terms of the budget as we speak, you know, so
25 you'll be up to speed on that front.

1 CHAIRMAN KEESE: Okay, so that meeting
2 will take place in the third floor conference room
3 after the executive session in my office is
4 concluded.

5 MR. CHAMBERLAIN: Mr. Larson has
6 informed me that the executive session is for the
7 purpose of considering the appointment or
8 employment of an employee. And so it's authorized
9 under section 11126(a) of the Government Code.

10 CHAIRMAN KEESE: Thank you. Public
11 Adviser.

12 MS. ROSS: No report.

13 CHAIRMAN KEESE: No report from the
14 Public Adviser. Is there any public comment at
15 this time?

16 Then, may I ask one question of my
17 fellow Commissioners. We have a special meeting
18 set for Monday at 1:00 p.m. It looks like we will
19 be here Monday --

20 COMMISSIONER PERNELL: Wait a minute,
21 wait a minute.

22 COMMISSIONER LAURIE: That's the 11th.

23 CHAIRMAN KEESE: We also have a meeting
24 next Wednesday on the 13th, but we have a special
25 one Monday, the 11th. I just wanted to bring that

1 to your attention.

2 With that, subject to the executive
3 session, we will be adjourned.

4 (Whereupon, at 11:30 a.m., the business
5 meeting was adjourned.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Business Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of June, 2001.

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